

1 Short Title: GSC Trust Exclusion/Rule Against Perpetuities.

2 A BILL TO BE ENTITLED

3 AN ACT TO CLARIFY THE TRUST EXCLUSION TO THE RULE AGAINST  
4 PERPETUITIES AND TO MAKE TECHNICAL AMENDMENTS IN THE  
5 SURROUNDING LANGUAGE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 41-15 reads as rewritten:

8 "**§ 41-15. Statutory rule against perpetuities.**

9 (a) ~~Except as otherwise provided in G.S. 41-23, a~~ A nonvested property interest is invalid  
10 unless:

11 (1) When the interest is created, it is certain to vest or terminate no later than 21  
12 years after the death of an individual then alive; or

13 (2) The interest either vests or terminates within 90 years after its creation.

14 (b) A general power of appointment not presently exercisable because of a condition  
15 precedent is invalid unless:

16 (1) When the power is created, the condition precedent is certain to be satisfied  
17 or become impossible to satisfy no later than 21 years after the death of an  
18 individual then alive; or

19 (2) The condition precedent either is satisfied or becomes impossible to satisfy  
20 within 90 years after its creation.

21 (c) A nongeneral power of appointment or a general testamentary power of appointment  
22 is invalid unless:

23 (1) When the power is created, it is certain to be irrevocably exercised or  
24 otherwise to terminate no later than 21 years after the death of an individual  
25 then alive; or

1           (2)    The power is irrevocably exercised or otherwise terminates within 90 years  
2                    after its creation.

3           (d)    In determining whether a nonvested property interest or a power of appointment is  
4 valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be  
5 born to an individual after the individual's death is disregarded.

6           (e)    If, in measuring a period from the creation of a property arrangement, language in a  
7 governing instrument:

8                   (1)    Seeks to disallow the vesting or termination of any interest beyond,

9                   (2)    Seeks to postpone the vesting or termination of any interest until, or

10                  (3)    Seeks to operate in effect in any similar fashion upon,

11 the later of (i) the expiration of a period of time not exceeding 21 years after the death of the  
12 survivor of specified lives in being at the creation of the property arrangement or (ii) the  
13 expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor  
14 of lives in being at the creation of the property arrangement, that language is inoperative to the  
15 extent it produces a period of time that exceeds 21 years after the death of the survivor of the  
16 specified lives."

17                   **SECTION 2.** G.S. 41-18 reads as rewritten:

18 "**§ 41-18. Exclusions from statutory rule against perpetuities.**

19 G.S. 41-15 does not apply to any of the following:

20           (1)    A nonvested property interest or a power of appointment arising out of a  
21 nondonative transfer, except a nonvested property interest or a power of  
22 appointment arising out ~~of:~~ of any of the following:

23                   a.    A premarital or postmarital ~~agreement;~~ agreement.

24                   b.    A separation or divorce ~~settlement;~~ settlement.

25                   c.    A spouse's ~~election;~~ election.

- 1 d. A similar arrangement arising out of a prospective, existing, or  
2 previous marital relationship between the ~~parties;~~ parties.
- 3 e. A contract to make or not to revoke a will or ~~trust;~~ trust.
- 4 f. A contract to exercise or not to exercise a power of ~~appointment;~~  
5 appointment.
- 6 g. A transfer in satisfaction of a duty of ~~support; or~~ support.
- 7 h. A reciprocal ~~transfer;~~ transfer.
- 8 (2) A fiduciary's power relating to the administration or management of assets,  
9 including the power of a fiduciary to sell, lease, or mortgage property, and the  
10 power of a fiduciary to determine principal and ~~income;~~ income.
- 11 (3) A power to appoint a ~~fiduciary;~~ fiduciary.
- 12 (4) A discretionary power of a trustee to distribute principal before termination of  
13 a trust to a beneficiary having an indefeasibly vested interest in the income  
14 and ~~principal;~~ principal.
- 15 (5) A nonvested property interest held by a charity, government, or governmental  
16 agency or subdivision, if the nonvested property interest is preceded by an  
17 interest held by another charity, government, or governmental agency or  
18 ~~subdivision;~~ subdivision.
- 19 (6) A nonvested property interest in or a power of appointment with respect to a  
20 trust or other property arrangement forming part of a pension, profit-sharing,  
21 stock bonus, health, disability, death benefit, income deferral, or other current  
22 or deferred benefit plan for one or more employees, independent contractors,  
23 or their beneficiaries or spouses, to which contributions are made for the  
24 purpose of distributing to or for the benefit of the participants or their  
25 beneficiaries or spouses the property, income, or principal in the trust or other

1 property arrangement, except a nonvested property interest or a power of  
2 appointment that is created by an election of a participant or a beneficiary or  
3 ~~spouse; spouse.~~

4 (7) A property interest, power of appointment, or arrangement that was not  
5 subject to the common-law rule against perpetuities or is excluded by another  
6 statute of this ~~State; State.~~

7 (8) A property interest or arrangement subjected to a time limit under ~~Article 14~~  
8 ~~of Chapter 36A, "Honorary Trusts; Trusts for Pets; Trusts for Cemetery Lots";~~  
9 ~~or G.S. 36C-4-408 or G.S. 36C-4-409.~~

10 (9) A property interest or arrangement subjected to a time limit under Article 3 of  
11 this Chapter, "Time Limits on Options in Gross and Certain Other Interests in  
12 ~~Land". Land."~~

13 (10) A nonvested property interest in or a power of appointment over property or  
14 property interests of a trust to which G.S. 41-23 applies."

15 **SECTION 3.** This act is effective when it becomes law and applies to all trusts  
16 created before, on, or after August 19, 2007.